

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Residential Building
Contractor's License of Daniel W. Booren,
doing business as Scandia Builders

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for a Pre-Hearing Conference before Administrative Law Judge Eric L. Lipman on March 25, 2010, at the Saint Paul offices of the Office of Administrative Hearings

Michael J. Tostengard, Assistant Attorney General, appeared on behalf of the Department of Labor and Industry (Department). Daniel W. Booren, appeared on his own behalf and without counsel (Respondent).

STATEMENT OF THE ISSUE

1. Did the Respondent perform negligently or in breach of his contract with Bob and Holly Vance for repairs to a home in violation of Minn. Stat. § 326B.84 (4)?

The Administrative Law Judge concludes that Mr. Booren did fail to perform his contract with Robert and Holly Vance, in violation of Minn. Stat. § 326B.84 (4), and is subject to regulatory discipline.

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Respondent Daniel Booren holds Residential Building Contractor License No. 8788. He was issued this license by the Department on April 21, 1993.¹

2. On May 11, 2009, Mr. Booren entered into a contract to affect repairs to the roof, eaves, soffits and chimney of a home owned by Robert and Holly Vance in Scandia, Minnesota. The Vances accepted the terms of Mr. Booren's proposal dated May 11, 2009.²

¹ See, Exhibit A.

² Ex. 2; Testimony of Daniel Booren; Testimony of Robert Vance.

3. Under the terms of the contract, the Vances were obliged to pay approximately half of the estimated cost of the repairs – \$4,000 – as a down payment towards a total projected cost of \$8,050. Under the contract, the balance of the contract amount was due upon completion of the project.³

4. While the parties did discuss the possibility of placing new siding on the home, no firm agreement was reached on this point. Moreover, the May 11, 2009 proposal submitted to the Vances by Mr. Booren does not address the provision of siding.⁴

5. Under the terms of the May 11, 2009 contract, Mr. Booren pledged to complete “clean-up [and] removal of debris” after the completion of the contract work.⁵

6. By way of a personal check, number 10145, the Vances made a down payment of \$6,000 toward completion of the repairs.⁶

7. So as to facilitate his work on the eaves and soffits of the home, and believing that the siding on the home would be removed in the near future in any event, Mr. Booren removed portions of the siding on the Vance home.⁷

8. On Thursday, May 21, 2009, Mr. Booren telephoned Mr. Vance to inform him the project was completed and requested payment of the balance of the contract.⁸

9. Mr. Vance, who is employed as an over-the-road truck driver, noted that he was not in the area but would be returning on the upcoming Saturday – May 23, 2009.⁹

10. Upon his return, Mr. Vance noted that portions of siding from the home had been removed; that the job site was littered with glass and construction debris; and that his car had been damaged.¹⁰

11. On Monday, May 25, 2009, Mr. Booren telephoned Mr. Vance and requested payment for the completed work. Mr. Vance was again away from Scandia and suggested that the two should meet on the upcoming Saturday, May 30, 2009.¹¹

³ Ex. 2; Test. of R. Vance.

⁴ Ex. 2 and A; Test. of D. Booren; Test. of R. Vance.

⁵ Ex. 2; Test. of D. Booren; Test. of R. Vance

⁶ Ex. 2; Test. of D. Booren.

⁷ Ex. 3; Test. of D. Booren.

⁸ Test. of R. Vance.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

12. During a May 30, 2009 meeting between Mr. Vance and Mr. Booreen, Mr. Vance stated that the work was not complete and that there had been significant damage to his home and property. Mr. Vance said that he would not remit the remainder of the contract price until the damage was repaired.¹²

13. For his part, Mr. Booreen regarded the claim for damages as overstated and not in good faith. Angry, he left the worksite and did not later return to the job.¹³

14. Mr. Vance later hired a different contractor to complete the project and to repair the damages. Moreover, Mr. Vance made a claim against Mr. Booreen's insurance carrier and was paid the sum of \$1,000 in settlement of that claim. Mr. Vance used the unpaid sums under the contract and the insurance proceeds to complete the project work and needed repairs.¹⁴

15. By way of a Licensing Order issued on October 7, 2009, the Minnesota Department of Labor and Industry concluded that Respondent performed negligently or in breach of contract in violation of Minn. Stat. § 326B.84 (4) (2008). As a sanction, it censured Respondent and assesses a monetary penalty of \$1,000.¹⁵

16. Mr. Booreen filed a timely appeal of the agency Order and was granted a contested case hearing.¹⁶

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of the Department of Labor and Industry have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 326B.082 and 326B.083.

2. The Notice and Order for Prehearing Conference issued by the Department was proper and the Department has fulfilled all relevant substantive and procedural requirements of law and rule.

3. Mr. Booreen, as a licensed residential building contractor, is obliged to adhere to the statutes and regulations governing this trade.

¹² Test. of D. Booreen; Test. of R. Vance.

¹³ Test. of D. Booreen.

¹⁴ Test. of R. Vance.

¹⁵ *Licensing Order*, BC2901121/GJL at 1 (Minn. Dep't of Labor and Industry, October 7, 2009).

¹⁶ *Licensing Order*, BC2901121/GJL at 3; Letter of Daniel Booreen (November 5, 2009).

4. Minn. Stat. § 326B.84, paragraph 4 authorizes the Commissioner of Labor and Industry to deny, suspend, limit, place conditions on, or revoke a license, or censure the person holding the license, if the licensee, qualifying person, or agent owner “has failed to reasonably supervise employees, agents, subcontractors, or salespersons, or has performed negligently or in breach of contract, so as to cause injury or harm to the public”

5. Mr. Booren did not fulfill the obligations he had made under the contract – particularly clean up of the project worksite.

6. Mr. Booren performed negligently by permanently removing siding from the Vance home without either an agreement to do so or a plan for remediation.

7. Minn. Stat. §§ 45.027 and 326B.84 empowers the Commissioner to take disciplinary action against the Respondents, for their violations of agency orders, state statute and state rules.

The imposition of a disciplinary action against Respondents is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the October 7, 2009, Licensing Order issued by the Commissioner of Labor and Industry against the Respondent Daniel W. Booren, doing business as Scandia Builders.

Dated: April 21, 2010

/s/ Eric L. Lipman

ERIC L. LIPMAN
Administrative Law Judge

Reported: Digitally recorded
No transcript prepared.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the Office of the Commissioner of Labor and Industry, 443 Lafayette Road, St. Paul, MN 55155, to ascertain the procedure for filing exceptions or presenting argument. Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail or as otherwise provided by law.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

MEMORANDUM

While mindful that Mr. Booren thought that, as of May 30, 2009, Mr. Vance was trying to obtain services which were not included in the contract, this view did not entitle Mr. Booren to abandon the job site and leave a portion of the contract work unfulfilled. Mr. Booren was obliged to fulfill the terms of May 11, 2009 contract.

Likewise, Mr. Booren may not avoid censure by arguing that, at the time he had left the worksite, the Vances had received more value in services than they had submitted as a down payment on complete performance. The relevant statutes and regulations insist upon the fulfillment of contracts by licensed Residential Building Contractors.

The Licensing Order dated October 7, 2009 should be affirmed.

E. L. L.